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SERIOUS THOUGHTS ON THE TRIAL OF Mr. BARNARD.

WITH A

STATE of the CONDUCT

OF THE

D**** of M****,

And the MAGISTRATE.

AND

Some Particulars not before publiſhed, relating to an Incident at BYEFLEET, which tend to give Light into the Affair, and perhaps may lead to a Diſcovery of the REAL AUTHOR of the Letters.

Addreſſed to a PERSON of HONOUR.

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SERIOUS THOUGHTS

ON THE

TRIAL of Mr. BARNARD.

SIR,

I Apply to you becauſe you have the power of redreſs; and as the ſubject is important, you will permit me to ſpeak my thoughts with freedom:

I believe there is not the meaneſt ſubject of Britain whom you would think unworthy your regard; nor the leaſt of his concerns that you would place beneath your notice. I am juſtified to think thus by the whole courſe of your actions; and I congratulate with my country that you conduct her councils.

You will not receive this as compliment; for your heart tells you it is truth: nor

will the world call it flattery, for there are characters above praiſe.

The ſubject on which I addreſs you is not ſingular: there have been in other caſes ſtrong ſuſpicion and abſolute acquittal. But there ſeems a defect in our policy, which this ſtrongly points out; and which you ſeem born to remove: for it muſt be the work of one who joins humanity with power. You will not expect me to intereſt myſelf about perſons: for that were idle and indecent: their part is paſt, and we have no right to rejudge the determination of a court of juſtice; eſpecially of that court where this cauſe was tried: for it may ſtand a model to the world. But the ſubject remains in its full force, and ſo far as the particular circumſtances of this freſh incident corroborate general thoughts, it may be fair to name them.

The crime for which this young man has been tried was of the higheſt nature: including many ſpecies of felony; and ſubject under as many inſtances to capital puniſhment. It became every one therefore who was concerned, to urge the proſecution with the moſt ſtrict and ſteady hand; and the court were of opinion, and the world,

world, now the proceedings appear, are ſenſible, there appear'd great reaſon to fix the ſuſpicion where it lay; and full and juſt foundation for a proſecution. This on the one hand: on the other, the abſolute defect of proof denies us liberty now to think the young man guilty; and the free acquittal of the jury commands us to believe him innocent.

In this ſenſe it cannot but be ſaid that he has ſuffered greatly: and the Britiſh heart is naturally inclined to the ſide of compaſſion. While the declar'd ſenſe of the judge, and our own ſecret opinion, juſtify the noble perſon who gave cauſe for the proſecution; we at the ſame time bring the matter home to our own hearts; and while we pity the accus'd tremble for ourſelves. No man is ſafe, if circumſtances, while he is innocent, can throw him into a priſon, and ſubject even his life to the opinion of men not infallible. Saying this I do not mean to reflect upon our form of trial. Far be it from me: there is none ſo commendable: but nothing human is or can be perfect. Neither this nor any other that could be inſtituted in its place, can

do more than acquit the innocent. I would therefore have ſome regard ſhewn to the poſſibility of error, whenever there wants proof, before a trial: when there appears the leaſt cauſe to think the accuſed may be guiltleſs, I would not have him puniſhed before his ſentence.

The courſe of juſtice here is undelayed, and frequent crimes make ſo frequent ſeſſions, that none lie long in priſon: but it muſt be allowed, that to be impriſoned is to ſuffer a very horrible puniſhment. The loſs of reputation is abſolute; and all know how difficult that is to be recovered: and often there is the loſs of life. Cuſtom enables the keepers to breathe the unhealthy air of confined damps; and coarſe conſtitutions are leſs affected by it: but 'tis certain, in ſpite of all our new care on the ſubject, a diſeaſe ſcarce leſs fatal than the plague uſually rages there; and little leſs infectious.

The man whom a concurrence of circumſtances brings under ſuſpicion, is thrown, tho' innocent, into this fatal place; and is ſubjected to the danger of his life, before his country finds him guiltleſs.

Crimes

Crimes encreaſe and laws grow numerous with them. The artifice which habitual wickedneſs gives offenders, demands and requires all kinds of caution in the magiſtrate: and the worſt criminals muſt often eſcape, if he be not allowed to hold them in ſecurity on the ſlendereſt thread of juſt ſuſpicion. Though it be true, that many guilty perſons had better eſcape, than one who is innocent ſuffer; yet this is alſo true, that in the courſe of human things 'tis unavoidable but the innocent muſt ſometimes fall under ſuſpicion. No man reads the heart of another, nor has the magiſtrate that full light of evidence which breaks out on a trial. 'Tis neceſſary he ſhould have the power of committing on the ſuſpicions which juſtly riſe before him; and this muſt be always ſubmitted to his abſolute diſcretion.

This lodges a great power in the magiſtrate, but it cannot be otherwiſe; the eyes of the publick are upon him if he does amiſs; and no honours are too great when he conducts himſelf with prudence and integrity. I muſt have leave to ſay, ſuch a man goes thro' the toilſome office at preſent; and that there are few private perſons to whom a nation has been more obliged.

It may not always be ſo: bad men or weak ones may aſſume the office; or may be intruſted with it by their friends in power. All miniſters are not like you, and there is ſcarce any employment this kingdom has not at one time or other ſeen made a jobb.

I intreat you, ſir, to remember that you are not immortal: and let our poſterity as well as ourſelves enjoy the benefits of your attention and integrity. This neceſſary power ſhould be diveſted of its worſt oppreſſion: men who are ſuſpected ſhould be kept in ſecurity, but not puniſhed; and the moſt tender heart ſhould feel no ſting at having brought the innocent, on fair ſuſpicion, to a trial.

The neceſſity of ſecuring ſuch perſons appears daily, and it is very hard to judge, when it is and when it is not a hardſhip. The ſtory of this young man is an inſtance.

STATE OF THE CASE.

The Duke of Marlborough, a perſon of the higheſt rank, and of a moſt reſpectable and amiable character, received from an unknown perſon a letter, demanding an income

come for life, and threatning him with death, by ſecret practices, if this were not granted. There appears no reaſon why this demand is made upon the Duke of Marlborough rather than any other perſon; nor any claim to regard; or mention of former ſervice. A place of meeting is appointed, to which the duke goes, arm'd; for it was to meet a profeſſed aſſaſſin. He ſees only one man there, whom he has no reaſon to believe or doubt to be the perſon, except that he was upon the place. He is queſtioned; and he denies that he is the perſon.

A ſecond letter is received, appointing a meeting in another place. The duke goes thither, and, in the place of arms, appoints an officer of juſtice. He ſees the ſame perſon; and ſees no other whom he can have the leaſt cauſe to ſuſpect. He ſpeaks to him, but he again denies all knowledge of the letters. A raſh man would have ordered this perſon to be ſeized; but humanity, the ruling character in this nobleman's heart, prevailed over his ſtrong ſuſpicion. He ſuffered him to go.

Another letter is received by the duke, written in pretended kindneſs, and men-

tioning by name a young man on this ſubject. The duke ſends for the perſon nam'd, and the man who comes is the ſame he had met at both the appointments. Whether it were from confuſion, or whatever cauſe, his anſwers were ſuch as could not but give ſome freſh cauſe of ſuſpicion: however he ſtill diſclaimed all knowledge of the fact. The duke's opinion of his being the perſon was ſtrengthened: but ſtill mercy prevailed in his breaſt; perhaps compaſſion, for one who appeared to him to be a perſon not equal to the bad ſcheme he had formed. He was again ſuffered to go.

At length the cognizance of the whole matter was given to a magiſtrate, who examined; and upon theſe and many other circumſtances, not leſs ſuſpicious, committed this perſon to cuſtody.

If we review the circumſtances together, who is there that would have acted otherwiſe! the crime of ſending an incendiary letter is under any circumſtances juſtly capital; but there were aggravations here in which the offence never appeared before, ariſing from the dignity and office

of

of the great perſonage to whom it was ſent; a peer of the realm, a privy counſellor, and a commander in the ſervice, at this time commiſſioned with the conduct of a moſt expenſive and powerful expedition, from which the kingdom promiſes itſelf vaſt advantages; and in the conduct of which no man doubts, but if like circumſtances occur, he will repeat the actions, and recall the glory of his great anceſtor, who reduced France to the verge of ruin, and raiſed this kingdom to its higheſt honour.

Under ſuch ſuſpicions of ſo high a crime, the magiſtrate could not avoid ordering the perſon into cuſtody: that cuſtody, according to the laws and cuſtoms of this country, is a priſon: there is no other: but it is juſtice to the candour of that magiſtrate to add, that before this harſh tho' neceſſary ſtep was taken, he not only heard all that could be urged in favour of the accuſed; but ordered him to be kept under the care of the conſtable ſeveral hours, to give his father and his friends time to recollect any favourable circumſtance, which the hurry and confuſion of the ſcene might have made them forget.

Thus

Thus was the young man, by the mildeſt proſecutor that ever appeared, and the moſt candid magiſtrate that perhaps ever acted, committed to a priſon. They ſtand very much above all cenſure, and yet he, from the ſenſe his country has expreſſed of his innocence, has reaſon to complain of hardſhips; very little becoming the boaſted government of this kingdom, or conſiſtent with the liberty of a Britiſh ſubject.

Though every man in the place of the Duke of Marlborough would have proſecuted, and every man in the place of the magiſtrate muſt have committed him, yet there has appeared, upon the faireſt trial, no proof of guilt againſt him, no motive that he could have to commit the crime, nor any one circumſtance to heighten the ſuſpicion.

That the letters were written is evident; but there is no farther cauſe to think he wrote them: and all that gave, and that ſtrengthened from time to time the duke's ſuſpicion, was probably the contrivance of another for his ruin.

The perſon who wrote the firſt letter, might know his way lay through the park about that hour; for if the ſcene was thus laid, it could not be by a ſtranger: it is

evident

evident that he was led into the abbey: and his waiting upon the duke when ſent for, carries no mark of guilt.

The young man has and always had a fair and honeſt character: there wants the apparent motive, for his circumſtances are not deſperate; and his ſituation and proſpect are too good, to run into needleſs hazards.

If he was thus led into the way of ſuſpicion, the contrivance was artful in the higheſt degree; as artful as it was cruel: but we need not thence conclude it improbable: for he who wrote thoſe letters ſeems cunning enough, and wicked enough for any thing. In this caſe, though no-body that we know is to be blamed, it is plain who is to be pitied; and if the young man's ſenſe of his own innocence ſhould prompt him to deſire it, probably, Sir, you can obtain ſome offer of a reward for the diſcovery. You will permit me to add, that upon the face of things it appears this is not an improbable expectation.

The perſon muſt be the young man's acquaintance and his enemy: and probably the occaſion of that enmity not very long paſt; for revenge ſo cruel is ſeldom ſlow. Let him revolve in his own mind who of his

his acquaintance have lately become his enemies: the number cannot be great; and this will rationally lead the ſuſpicion.

Among theſe there can be very few indeed capable of writing letters ſo accurate in their ſtile; and it may be added, that there is alſo a peculiar caſt of thought as well as choice of words which is ſtrongly and highly characteriſtick.

I think if I had ever been acquainted with the man who wrote thoſe letters, I could as eaſily know them to be his by that turn of thought, as I could know a picture of Titian by his ſunſhine: and certainly, if he has ever received letters from that perſon, he may find in them a reſemblance of the ſtyle. Perhaps alſo upon compariſon, there will appear reſemblances in the hand, though it be diſguiſed in thoſe letters. Certainly no other perſon was entruſted to write them; and no diſguiſe excludes all marks of likeneſs.

From theſe ſuſpicions he may be led to proofs. Perhaps the perſon who dropped the laſt letter at the Duke of Marlborough's door was employed to do it; there might be leſs caution in this than the other caſes, becauſe if the author were diſcovered

vered it is not of their nature: but if the writer of that letter were known, the author of the others would not be long concealed; for they were all written in one hand.

Perhaps theſe letters were written by another perſon, not with the immediate deſign of ruining this young man, but from ſome other motive: and the danger of a diſcovery might induce the real author of them afterwards to endeavour to lead the noble perſon to whom they were ſent, into a wrong courſe of enquiry. This is poſſible: and though there are ſome circumſtances difficult to reconcile to the conjecture, yet it is worth his thought: every thing deſerves conſideration that can lead toward the truth in this dark affair.

Suppoſing this, we have no leading gueſs towards the perſon but to examine what could be the motive. The real expectation of an income for life, though that be the pretext of the firſt letter, can ſcarce be ſuppoſed the author's true meaning: he who could write ſo ſenſible a letter, would not aſk the money under circumſtances that muſt lay him open continually to conviction.

If we diſallow this, we are to ſeek ſome other

other poſſible motive: and 'tis not impoſſible, that the whole might be a deſign to inſult and diſturb the noble perſon, from the effect of an inſolent reſentment.

'Tis ſaid, that when the Duke of Marlborough commanded in the camp at Byefleet, ſome young men from London were concerned in certain irregularities there, which were juſtly, though not ſeverely puniſhed. This perſon mentions having ſeen the duke in that place; 'tis poſſible it might be on that occaſion; and if he was one of the perſons concerned in the diſturbance, all may be perhaps that way unravelled. Some one of that company may have been the writer of theſe letters; and may have fixed on this perſon to bear the ſuſpicion, which he might apprehend likely to fall otherwiſe upon himſelf.

It has been ſaid, a young man ſoon after that tranſaction, offered to the printers of ſome of our news-papers a paragraph relating to it; which was too indecent to be publiſhed: and it is not impoſſible that the ſame pertneſs of diſpoſition, the ſame turn to be witty, and the ſame reſentment which was diſappointed in that attempt to give his grace uneaſineſs, may have urged the author to contrive this ſtrange and hazardous method.

If

If this may lead to any knowledge of the author, no one can be ſo intereſted in the diſcovery as the young man who has been tried for the offence; and he may poſſibly, if he was concerned in that diſturbance, by recollecting who were his companions, be led to make a probable conjecture. He muſt be a bad man and a man of parts who could be guilty of it, and could manage his guilt with ſo much addreſs and artifice. Something is due to public juſtice, and the world ſhould know him.

This is what I have wiſhed to propoſe in the preſent caſe: with regard to the general circumſtance ſomething may certainly be done; and, Sir, it would become your wiſdom and humanity to undertake it. To rail at a magiſtrate for committing a perſon to priſon who ſtands reaſonably ſuſpected, is moſt ungenerous; and to moleſt him with proſecutions would be diſhoneſt. Who ſhall accuſe him for not admitting to bail, in caſes where a high court will not grant a Habeas Corpus; yet men love to rail; and there are tempers which delight in miſchief.

The condition of the magiſtrate therefore is hard, but that of an innocent ſuſpected perſon is greatly worſe. 'Tis needful

ſuch

ſuch a man ſhould be had in ſecurity, but 'tis not fit he ſhould be thrown into a dungeon. We have had a very late inſtance, that a perſon perfectly innocent may be accuſed poſitively of the worſt crimes: and for perſons againſt whom the evidence ſhould be precarious, or the ſuſpicion tho' ſtrong, yet attended with improbable circumſtances, it were to be wiſhed a place of ſtrength might be prepared adjoining to each goal, where the perſon might be in the cuſtody of the goaler, tho' not in the abſolute priſon. It would remove the danger of diſeaſes; and palliate the diſgrace. The name of a priſon is a ſhame the perſon rarely wipes off through life, though he be found innocent; and the taking off that term of infamy would be, tho' it appear a trifle, a ſerious conſideration.

If I am miſtaken, pardon me the error, for I have meant well! if the propoſal be found reaſonable, your own wiſdom will beſt inform you how it ſhould be brought into execution.

I am, with the moſt ſincere reſpect,

SIR,

Your obedient humble ſervant,

A BRITISH SUBJECT.